(Testimony of Dallas A. Johnson.)

you found in the way of Cheddar cheese on board that ship?

Mr. Faulkner: May I see the notes? May I ask Mr. Johnson about the record?

The Court: You may.

Mr. Faulkner: Q. Mr. Johnson when did you prepare this record?

A. That was prepared when I went on board the Sacajawea.

Q. Will you point out on the record where there is a reference to Cheddar cheese wheels?

A. The lower——

Q. Just point it out, please. I just want you to point it out. A. Right there.

Q. All right.

The Court: Proceed, gentlemen.

Mr. Houck: Q. On that ship how many cases of cheese did you find?

A. I found 3 cases of Cheddar twins.

Q. 3 cases of Cheddar twins. How many wheels would that be? A. That would be six wheels.

Q. How was it billed to the Government?

A. It was billed at 180 pounds.

Q. Did you weigh that cheese? A. I did.

Q. How much did it weigh?

A. Weighed 145 pounds seven ounces.

Q. How much was that short of the billed weight? [2857]

A. It would be 34 pounds 9 ounces short.

Q. In the Nye & Nissen plant when they were furnishing you records, did they give you any record

(Testimony of Dallas A. Johnson.)

showing the weights of Cheddar Loaf cheese which they either purchased or produced?

A. Yes, they did.

Mr. Faulkner: We object to that as not proper redirect examination. The question relates to Cheddar wheels. Cheddar Loaf cheese is not within the issues——

Mr. Houck: It is the same type of questioning, your Honor.

Mr. Faulkner: I beg counsel's pardon. In other words, this witness testified that he saw Cheddar wheels that weighed 30 pounds and that they were constantly billed at 30 pounds. Cheddar loaf cheese comes in a 30-pound package with five or six smalled packages. I asked no questions on that subject at all.

Mr. Houck: Well, if counsel did not ask the question I ask the court's permission to ask one or two questions of this witness on that score.

The Court: Read the question.

(Question read.)

The Court: Answer.

The Witness: A. Yes, they did.

Mr. Houck: Q. What was the weight of those Cheddar loaves, please, that they purchased or produced——

A. The weights varied from about 25 to 27 pounds per case. [2858]

Q. 25 to 27 pounds per case. Did you examine the invoice billing the sale of this cheese to the Government, or War Shipping Administration?

(Testimony of Dallas A. Johnson.)

A. Yes, of this type of cheese.

Q. Let me show you the record marked as Defendants' CA; did you make any notation of the weight at which this cheese was billed to the Government? A. Yes.

Q. And what was that weight for the single case? A. For what month?

Q. The month you have in that record.

A. From January 1st through May, 1944, in this record.

Q. At what weights were this cheese which was purchased at 25 to 27 pounds billed to the Government? A. I don't have it.

Q. The invoice that you have noted in that record is what?

A. I don't have the off-setting figure on this schedule of purchases. However, starting the month of April there are 21 instances where they sold cheese of this type, Cheddar Loaf cheese and billed it at the weight of 30 pounds per case.

Q. That represents 21 instances of a delivery which were furnished you at the Nye & Nissen plant? A. Yes.

Q. That record by Nye & Nissen Company?

A. Yes. I wish to correct a statement I made. That is five weeks, beginning the 1st of April. That takes it up to the first week of May.

Q. 21 instances in a period of five weeks?

A. Yes.

Mr. Houck: That is all. [2859]

(Testimony of Dallas A. Johnson.)

Further Recross Examination

Mr. Faulkner: Q. Is that on that record? May I see it?

The Court: Show it to him on the record so we won't waste any time about it.

Mr. Faulkner: Q. What date is that?

A. This is your invoice number, right there.

Q. April—where is the five-weeks period?

A. Starting with that date.

The Court: Beginning the first of April, did you say?

The Witness: Yes.

Mr. Faulkner: April 1, 1944, and ending what date?

A. Well, ending—we drew the line here, 5-11.

Mr. Faulkner: That is all.

The Court: Step down.

FLOYD R. MENCIMER,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Floyd R. Mencimer.

Direct Examination

Mr. Hippeli: Q. What is your name, Captain?

A. Floyd R. Mencimer.

Q. What is your rank? A. Captain.

Q. Of what corps are you a member?

(Testimony of Floyd R. Mencimer.)

A. I am in the Veterinary Corps, United States Army. [2860].

Q. Were you a member of that corps in August, August 2, 1943? A. I was.

Q. Where were stationed then?

A. At the Presidio of San Francisco.

Q. Where were you working?

A. At the Merchants Ice & Cold Storage.

Q. Where? In San Francisco?

A. San Francisco.

Q. At that time and place did you receive a delivery of butter? A. We did.

Q. From whom was the butter received?

A. From Nye & Nissen Company.

Q. How was it received, by truck?

A. By truck.

Q. Did you observe any marking on the truck?

A. Not that I recall.

Q. Was it a Nye & Nissen truck?

A. Yes.

Q. Who was the purchaser of the butter?

A. The Army.

Q. Do you recall the number of pounds of butter included in the purchase order?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, and not within the issues of this case, your Honor.

Mr. Hippeli: I am trying to identify a particular delivery of butter from Nye & Nissen.

The Court: What particular delivery?

Mr. Hippeli: I asked the time of the delivery.

(Testimony of Floyd R. Mencimer.)

My [2861] next question is whether the witness recalled the number of crates that was in the delivery, the number of cases in the delivery, which is a means of identifying the purchase order.

The Court: What particular purchase order?

Mr. Hippeli: Q. Do you recall the particular purchase order number?

A. Not without refreshing——

Q. At the time you received that delivery did you make certain notes? A. Yes, we did.

Q. Were the notes you made then part of your duties as an inspector of the Veterinary Corps at the time? A. Yes.

Mr. Faulkner: Those are not notes; that is typewritten—

Mr. Hippeli: Q. What is that?

A. This is an inspection form, a rejection form.

Q. Does that bear your signature?

A. Yes.

Q. Did you make that at or about the time of the delivery of butter that you have testified to?

A. That's right.

Q. Can you tell from your inspection sheet the number of the purchase order under which the delivery was made?

Mr. Faulkner: May I ask the witness a question about this document?

The Court: Yes.

Mr. Faulkner: Q. When was this paper prepared?

A. It was prepared in August of 1943.

(Testimony of Floyd R. Mencimer.)

Q. Without this document, do you remember the incident? A. I do. [2862]

Q. Then you don't need the document to refresh your recollection? A. Only for the number.

Q. Only for the number?

A. The purchase order number.

Q. Did you see the purchase order?

A. Yes.

Q. When did you see the purchase order?

A. In 1943.

Q. You wrote this in the regular course of your business, did you? A. Yes.

Mr. Faulkner: May the paper be marked, your Honor?

(The document was marked Defendants' Exhibit CB for Identification.)

Mr. Hippeli: Q. What was the number on the purchase order? A. S.F. 959.

Mr. Faulkner: May I have that repeated, your Honor?

(The answer was read by the reporter.)

Mr. Hippeli: S.F. 959.

Q. How many pounds of butter was called for under that purchase order?

A. It called for 75,000 pounds.

Q. How many pounds were delivered on that particular occasion?

A. Approximately 15,000.

Q. Do you recall if the purchase order indicated

(Testimony of Floyd R. Mencimer.)

whether or not any weight markings were to be included on the cases? A. They were.

Q. Were weight markings on the particular cases delivered at that time? A. What was that?

Q. Did any weight markings appear on the cases of butter delivered [2863] at that time?

A. They did.

Q. What were they?

A. It called for the net weight, the gross weight and the tare.

Q. Do you recall the net weight marking on the cases? A. Called for 60 pounds net.

Q. How many cases of butter were delivered at that time? A. 252.

Q. Did you weigh any of those cases of butter?

A. We did.

Q. Will you explain how you weighed them?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, and not binding upon the defendants in this case, your Honor. No connection with any defendant to this transaction.

Mr. Hippeli: If the defendant Nye & Nissen sold butter to the Army; butter was delivered by the Nye & Nissen truck—I will ask this question: Did you observe any——

Mr. Pratt: If the Court please, this is a transaction exactly within the description of the indictment.

The Court: What count of the indictment?

(Testimony of Floyd R. Menemier.)

Mr. Pratt: The first count of the indictment, and the corporation is certainly a party to this transaction. It was a sale of butter to the extent of 75,000 pounds, and Captain Menemier is testifying in regard to the delivery of a portion of this 75,000 pounds. It is particularly within the allegations, directly within the allegations of the indictment. [2864]

Mr. Faulkner: Your Honor, who prepared the order? Who gave the instructions to deliver it? Who is——

The Court: Read the question.

(Question read.)

The Court: The objection will be overruled.

Mr. Faulkner: Exception. [2864-a]

The Court: The objection will be overruled.

Mr. Faulkner: Exception. You Honor, may I point this out. I know in a civil case you can lay a foundation against a corporation by showing certain indications that they participated in a delivery.

Now, the fact that this butter came in a Nye & Nissen truck, I would assume that it came from the plant of Nye & Nissen. But the firm of Nye & Nissen can only be bound by the acts of its officers. Now, what officer of the firm of Nye & Nissen participated in this transaction, whatever it may be? That is the foundation for the evidence. You can't bind the corporation by a truck driver in a criminal case. And until that foundation is laid, there is no foundation in this record for the admissibility of

(Testimony of Floyd R. Mencimer.)

an isolated transaction not mentioned in the indictment in connection with the weights and inspection

The Court: Counsel indicated it was mentioned in the first count of the indictment.

Mr. Faulkner: That is true, but there is no mention of it. This transaction is not mentioned.

The Court: Read it.

Mr. Pratt: The description in the indictment is general in that it is charged that the defendants, including the corporation, defrauded the Government in connection with the weights and inspection of various products, including butter, and this is directly within the description of the offense [2865] charged in the first count—conspiracy to defraud the Government in connection with weight and inspection of butter, eggs and cheese.

Mr. Faulkner: But that foundation is not here. The truck driver delivered some butter.

The Court: Is there any question before the Court?

Mr. Faulkner: Yes.

The Court: Read it.

(The last question was re-read.)

The Court: The objection may be overruled. You may answer.

Mr. Faulkner: Exception.

The Witness: A. Twenty-five cases were placed from the truck onto a dolly and wheeled into the plant and placed on the scales.

The Court: Q. What plant?

The Witness: A. The Merchants Ice, the Army

(Testimony of Floyd R. Mencimer.)

freezer. The enlisted man made note that the gross weigh, the net weight taken away from it, did not amount to the amount that was listed on the cases for that many, so they called my attention to it.

Mr. Hippeli: Q. What did you do then?

A. We proceeded then to take fifteen cases off it and take the butter clear from the case, the net butter, weighed it, and found that it was short of what it was listed on the case to [2866] be.

Q. Did you take the contents from each of how many cases? A. Fifteen.

Q. Did you weigh the contents of each of the fifteen cases separately? A. We did.

Q. Did you observe any label on the cases from which you selected the contents at that time?

A. The cases were marked from the vendor Nye & Nissen.

Q. Did you observe any markings on the label of the butter that was inside the cases?

A. I do not recall the name.

Q. How did each of the fifteen cases of butter weigh?

A. They approximately weighed 56 pounds, as I recall.

Q. That is the net weight of each of the fifteen cases, is that correct? A. That is right.

Q. Did you reject that delivery of butter?

A. We did.

Q. Prior to the arrival of that delivery, in the course of your official duties, did you receive a copy of the purchase order? A. We did.

(Testimony of Floyd R. Mencimer.)

Q. What is the document that I have just handed you?

A. This is a War Department purchase order.

Q. For what?

A. For 75,000 pounds of butter.

Q. To whom did the purchase order issue?

A. To Nye & Nissen Company, San Francisco.

Q. What date?

A. It is dated July 30, 1943.

Q. Does that purchase order indicate the manner in which cases [2867] of butter are to be marked? A. Yes sir.

Q. Does it indicate that the cases are to bear the net weight? A. It does.

Q. Does it indicate that each case is to be placed in a 60-pound box? A. Yes sir.

Q. Is that the purchase order under which the delivery that you have testified to was received?

A. Yes sir.

Mr. Hippeli: I offer the purchase order in evidence.

Mr. Faulkner: We object to it as incompetent, irrelevant and immaterial and not binding on the defendants in this case.

The Court: The objection is overruled. It may be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 172.)

Mr. Hippeli: You may cross examine.

(Testimony of Floyd R. Mencimer.)

Cross Examination

Mr. Faulkner: Captain, is it not a fact that in relation to that particular order of butter what happened was this: That the Army received a quantity of butter on account of a purchase order for a substantially larger quantity on a certain date that was ordered under the purchase order?

A. They delivered some of it, yes sir.

Mr. Faulkner: Will your Honor indulge me a moment? I want to be sure that this is the transaction. Where is the balance of the purchase order, Mr. Hippeli? [2868]

Mr. Hippeli: I think they are all duplicates.

Mr. Faulkner: This is not the counterpart of a purchase order. This is only a fragment of it. The purchase order comes in four or five pages like this, Mr. Hippeli (indicating). There is an Army purchase order of seven pages. Now, where is the rest of that?

Q. Captain, is it your testimony that that is a complete Army purchase order?

A. That is right.

Q. Aren't there extra sheets attached to those purchase orders like that?

A. Not necessarily.

Q. And you say there was none attached to that at the time it was issued?

A. That I do not recall.

Q. If you do not recall how do know it is complete?

(Testimony of Floyd R. Mencimer.)

A. Well, the information is complete on there so far as the transaction is concerned.

Q. You do not know whether there is more to this purchase order than this single document, do you? A. No sir, I do not.

Mr. Faulkner: I will ask the Government to produce the purchase order.

Mr. Hippeli: I requested the purchase order to be forwarded to us and I received that document which Mr. Faulkner bears in his hands, which was attached to other copies which are duplicates of that. That is the extent of my knowledge with respect to the purchase order.

Mr. Pratt: It appears to be complete on its face. [2869]

Mr. Faulkner: It appears to you that way, Mr. Pratt. To me it appears incomplete because I have seen hundreds of them.

Q. You had another paper there. This purchase order you identified in court a few moments ago, has that been in your possession all the time, Captain? A. No sir.

Q. Pardon me? A. No sir.

Q. Do you remember seeing it on the third of August, 1943? A. That is right.

Q. The same identical paper?

A. Well, one exactly like it.

Q. The same form? A. Yes sir.

Q. Anything else attached to it?

A. Not that I recall.

(Testimony of Floyd R. Mencimer.)

Q. Under this purchase order the quantity involved was how many pounds?

A. 75,000.

Q. Is that supposed to be an original there, Captain, or how many zeros are there?

A. Well, there appears to be three.

Q. One is very light, isn't it?

A. Very light.

Q. Now, was this the first butter that was received on account of that order?

A. I think it was about the third shipment.

Q. And how much had been received before that?

A. Well, it varied anywhere from nine to twelve thousand at each shipment.

Q. Were the other shipments inspected at the point of delivery?

A. They were inspected, yes.

Q. Were they weighed?

A. That I do not recall. [2870]

Q. At all events, it was the practice of the Army in the year 1943 to weigh the butter at the point of delivery, wasn't it?

A. It was the practice, the policy, but not always the procedure. We were short of help.

Q. Pardon me?

A. We were short of personnel.

Q. Now, on this occasion how many cartons or how many particular containers of butter were delivered to the Army?

A. Two hundred and fifty-two.

(Testimony of Floyd R. Menenmer.)

Q. How many?

A. Two hundred and fifty-two.

Q. And how many did you weigh?

A. We weighed twenty-five in the first lot.

Q. How many did you weigh in this lot that you say was under weight? A. Twenty-five.

Q. That is one tenth, practically one tenth?

A. Approximately.

Q. Now, did I understand you to say that you rejected this butter? A. Yes sir.

Q. Did you reject it in a letter, in writing?

A. That is a rejection slip right there.

Q. Right here? A. Yes sir.

Q. Do you recall anything that occurred between the time that you inspected the butter and the time you issued a rejection certificate?

A. The procedure all went through the marketing center that did the purchasing.

Q. Isn't this the fact, that on a seventy-five thousand pound shipment of butter to the United Staes Army, in one of the [2871] shipments the Army reported to Nye & Nissen that they had weighed some butter that was under weight, and that they wanted to apply the factor of under weight to the entire order, and Nye & Nissen said, "We won't let you do any such thing." Isn't that what happened in this instance?

A. I don't know.

Q. It is a fact, is it not, Captain, that the general method of handling purchases for the United States Army in the year 1943 was for a purchase order to

(Testimony of Floyd R. Mencimer.)

be issued for butter, the Army would receive the butter, and if the butter was over weight they would keep it, and if it was just an ounce under weight per case they would ask the vendor to give them a credit memorandum? Isn't that the way they did it?

A. You could give all you wanted to over weight but not under weight.

Q. That is right, and when it was under weight —in other words, on an order, for instance, for thirty thousand pounds of butter the Army at times would demand a $10 credit for maybe twenty pounds under weight, ask for a credit, wouldn't they?

A. If that were the case, that was handled in the Marketing Center, not in our office. We were only charged with quantity and condition alone.

Q. Do you know where this butter came from? I do not mean who delivered it. I do not mean to go over that field. Do you know the source of the butter?

A. I presume it came from Nye & Nissen. Their name, the vendor's name, was listed on [2872] the side of the case.

Q. Were they wooden or fiber cases?

A. Wooden cases.

Q. When this butter was rejected did Nye & Nissen fulfill this order for 75,000 pounds of butter?

A. They did eventually.

Q. Eventually. Now, on the instance where you weighed two hundred and fifty-two cases, that

(Testimony of Floyd R. Mencimer.)

would be about ninety thousand pounds, somewhere around there?

A. It is about fifteen thousand.

Q. That would be about fifteen, that order?

A. Yes sir.

Q. At the time of this incident there were about two shipments prior to that that had been accepted? A. Yes sir.

Q. And this was the third shipment?

A. Yes sir.

Q. Do you know whether this butter was inspected or weighed in the plant of Nye & Nissen?

A. It was inspected. It bore the Veterinary Corps stamp when it came to us.

Q. That is the outside containers?

A. Yes.

Q. That is, these cartons had a Veterinary Corps stamp? A. Yes.

Q. Did those that preceded it bear a Veterinary Corps stamp? A. Yes sir.

Q. It was in the regular course of business when that butter came in it was weighed, isn't that right?

A. Yes sir.

Q. It was not always reinspected as to quality, was it? A. Never quality at the end.

Q. You have the privilege of inspecting as to quality under your contract, have you not?

A. Not at destination, not [2873] for quality.

Q. Not as to quality? Doesn't the ordinary purchase order have attached to it a provision that reads in substance as follows: "Army Veterinary

(Testimony of Floyd R. Meneimer.)

Inspection at origin for the type, class grade; inspection at destination for quantity, condition and soundness only." A. That is right.

Q. So that in addition to checking the butter as to weight, you checked it as to condition and soundnesss, did you not? A. That is right.

Q. On this instance this butter was presented and you found, I think you testified, that the cartons weighed 56 pounds? A. Net.

Q. The net weight? A. Yes sir.

Q. What was the gross weight?

A. The gross weight?

Q. Yes? A. 65 pounds.

Q. Sixty-five?

A. Container and butter, yes sir.

Q. Does the carton weigh ten pounds?

A. It weighs nine pounds.

Q. The carton weighs nine pounds?

A. A wooden box, yes, sir.

Q. Were they wooden?

A. Yes sir.

Q. How much do the fillers weigh?

A. No fillers in them.

Q. Was it not cut butter?

A. Cut butter, 1-pound prints.

Q. I did not mean fillers; I meant wrappers.

A. Yes sir, wrappers there.

Q. What did they weigh?

A. A very minute figure. [2874]

Q. Where is the figure 56? Where do you get that figure off your notes?

(Testimony of Floyd R. Mencimer.)

A. They are not listed on there.

Q. What?

A. The figure is not listed on there.

Q. Have you got some memorandum?

A. No sir, but I recall the incident.

Q. You are basing it upon your recollection of a particular incident? A. Yes sir.

Q. How many times, Captain, did you receive and inspect butter from the firm of Nye & Nissen in the year 1943?

A. That I do not know. We received a lot of products there for overseas shipment.

Q. Would you say daily?

A. No, possibly weekly.

Q. And over how long a period, Captain, did you inspect merchandise from the firm of Nye & Nissen, say weekly?

A. I was there about three months.

Q. For a period of three months?

A. Yes sir.

Q. In the weighing of butter at the point of destination, it is a fact, is it not, that what the Army does is substantially this: they have a quantity of butter and they pick out particular cases and weigh them, and if you picked out ten per cent of the cases and you found that they were under weight—found that they were over weight, that is a satisfactory deal, isn't it? A. Yes sir.

Q. And if you found that it was under weight, say a pound to a case, and you had inspected twenty-five pounds, you then [2875] asked the vendor to

(Testimony of Floyd R. Meneinner.)

allow a credit of two hundred and fifty-two pounds on the entire allotment of butter, isn't that right?

A. That I do not know. That is handled through that Marketing Center.

Q. You just report the fact to them, is that right? A. That is right.

Q. And you were not familiar with this other than the fact that you found some cases, weighed them, and reported it to the Marketing Center?

A. That is right.

Q. Do you know who you reported it to, or was it done through a channel?

A. They had an accountable officer there and it was reported to him as that piece of paper directs.

Q. Do you know what marking appeared, what wrappings appeared on this butter?

A. Not the wrappings, no sir.

Q. Do you know, Captain, whether it was Minnesota butter or California butter?

A. No sir, I do not.

Q. The requirements of shipments to the Army, not only in respect to this, but in respect to all butter, regardless of its source, the requirements were that the cases should be marked in a certain manner, was it not? A. That is right.

Q. And by the cases you mean the cartons?

A. I mean the container that held the 60 pounds.

Q. And this purchase order, Captain—it might be important later—it says here, Captain, "Mark packages," and underneath that are certain words: "For Account Officer— [2876] Quartermaster

(Testimony of Floyd R. Mencimer.)

Corps, S.F., Exports; Requisition No. OFD. Gross, Net, Tare, Cubic Measurement, P.O. Number." That is what the vendor, the shipper, is supposed to stencil or mark on each case, is that right?

A. That is true.

Q. And that is to facilitate the Army in future handling of the butter? A. That is right.

Q. So a vendor in San Francisco receiving butter from any source at all would be required to put that butter in a case so marked, isn't that correct?

A. Right.

Q. Now, where did you make this inspection?

A. Merchants Ice and Cold Storage in San Francisco.

Q. That is the place indicated here?

A. That is the delivery point, yes sir.

Q. The time of your inspection is the date of this paper? A. Right.

Q. Which date is the date of the purchase order, Captain? Is it this date here, July 9?

A. That is when it was issued. The delivery date calls for the 30th?

Q. On the 30th?

A. Beginning on the 30th?

Mr. Faulkner: That is all.

The Court: Is that all from this witness?

Mr. Faulkner: Q. Oh, was that square-cut butter?

A. It was cut in 1-pound cubes.

Q. One-pound cubes? A. Yes sir.

(Testimony of Floyd R. Mencimer.)

Q. That is distinguished from the oblong shape, isn't it? [2877]

A. Well, they are more square than they are oblong.

Q. I mean the ordinary pound of butter that the ladies would buy in the store is the oblong type, and then another type is cut in cubes?

A. That is right.

Q. And this was the cube type?

A. This was a 1-pound print in a cube.

Mr. Faulkner: That is all.

Redirect Examination

Mr. Hippeli: Q. Did you ever receive any butter from Nye & Nissen that weighed too much?

A. Not that I recall.

Q. Were those cases export cases?

A. Export.

Q. Does a case that is prepared for export weigh more heavily than the ordinary butter case?

A. The case holding the butter weighs more if it is wooden.

Q. Were these particular cases prepared in a manner different from the ordinary case into which butter was packed?

A. All export shipments required wooden cases at that time.

Q. Were those wooden cases heavier than the ordinary wooden case?

A. Not necessarily, no.

Q. Is the preparation for export heavier than

(Testimony of Floyd R. Menciner.)

the preparation for an ordinary case in which butter is packed? A. No, I do not think so.

Mr. Hippeli: May I show this purchase order to the Jury, your Honor?

(A document was passed among the Jury.)

Mr. Faulkner: I suggested that they be replaced, your Honor, because this shows the quantity quite clearly, and that one I think does not show it very well.

The Court: All right, pass it along if there is any question about it.

Mr. Faulkner: We can substitute it in evidence.

Mr. Hippeli: That will be fine. I did not notice that that was blurred. Is it all right if I hand them this one, Mr. Faulkner?

Mr. Faulkner: Yes.

(A second document was handed to the Jury.)

Mr. Faulkner: While the Jury is looking at that, may I call the Jury's attention to that part of the purchase order, Provision No. 3: "Variations in the quantities" that appear on the purchase order: "Unless other wise specified, any variance in the quantities herein called for, not exceeding 25 per cent, will be accepted as a compliance with the contract and caused by conditions of loading, shipping, packing, or allowances in manufacturing processes, and payment shall be adjusted accordingly."

Mr. Hippeli: At this time may be substitute for U. S. 172 in evidence a duplicate copy?

Mr. Faulkner: That is satisfactory, your Honor.

(Testimony of Floyd R. Meheimer.)

The Court: Very well. So ordered. The Jury may take a recess at this time. [2879]

Mr. Hippeli: May the witness be excused, your Honor? Mr. Faulkner has no further examination.

The Court: Are both sides through?

Mr. Faulkner: Yes.

The Court: You may be excused. [2879-a]

The Court: Call your next witness.

L. H. KIRCKHEIMER,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. L. H. Kirckheimer.

Direct Examination

Mr. Pratt: If the Court please, for the purpose of the record and to advise the court and jury, the Government directs attention to certain regulations adopted and promulgated by the Office of Price Administration of the United States which are published in the Federal Register, and of which this Court takes judicial notice, as required by law. These are known and designated as Maximum Price Regulation 333, with 27 applicable amendments, and Revised Maximum Price Regulation 333, with one applicable amendment. Maximum Price Regulation 333 is published in the Federal Register, Volume 8, page 2488. It is dated February 25, 1943. The 27 amendments are numbered successively from 1 to 27, inclusive, and likewise are published in the Federal Register. We can supply

(Testimony of L. H. Kirckheimer.)

counsel for the defendants with the volume and page and the date of each of these amendments.

Revised Maximum Price Regulation dated September 16, 1944, is published in the Federal Register in Volume 9 at page 11514. The single applicable amendment, dated October 6, 1944, is found in Vol. 9 of the Register, at page 12216.

These regulations will relate to the ceiling price on eggs sold to the United States, and defines the grades and sizes or weights of eggs upon which such ceiling prices are fixed. These are all relevant to the issues in this case, particularly as to each of the substantive counts of the indictment, namely, counts 2 to 7, where it is alleged that the false invoices submitted by the defendants to the Government misrepresenting the grades, weights and prices of the eggs——

Mr. Faulkner: Your Honor——

Mr. Pratt: Which were delivered——

Mr. Faulkner: This is an argument.

Mr. Pratt: To the Government in each of the counts described——

Mr. Faulkner: This is an argument. This is not an offer of proof. I have no objection to that summary of prices. The court takes judicial notice of it. No objection to it.

Mr. Pratt: I am not making an argument.

Mr. Faulkner: You are talking about the counts of the indictment——

Mr. Pratt: I am trying to state their applicability in this record.

Mr. Faulkner: Well, there is no objection to

(Testimony of L. H. Kirckheimer.)

them, so your statement is an argument. I haven't any objection, at all. [2881] This is precisely what we would have done, although not quite as well, I don't think. We have no objection to the summary. The court takes judicial notice of the law of which this is a summary, and I will suggest Mr. Pratt introduce his summary and let it be received in evidence subject to correction in any instance found.

The Court: I think that would be the better way to do it.

Mr. Pratt: Very well.

Q. Mr. Kirchheimer——

Mr. Faulkner: Do you want to accept my stipulation, Mr. Pratt?

Mr. Pratt: Well, I want the witness to qualify——

Mr. Faulkner: I will withdraw the suggestion.

The Court: I don't know what this witness will testify to. What is it?

Mr. Pratt: He has produced a schedule which counsel says is all right with him.

The Court: There is no objection to the schedule; there is no objection to it?

Mr. Faulkner: No. I suggested to Mr. Pratt that he introduce the schedule in evidence subject to correction on either side, in the event we examine it and there is any error when we examine the regulations.

The Court: Then you may read it to the jury.

Mr. Faulkner: We would be willing. [2882]

(Testimony of L. H. Kirckheimer.)

The Court: Is that the subject matter you wish to cover?

Mr. Pratt: No. There is just one thing I want to——

Mr. Faulkner: Well, I have got to withdraw my suggestion.

Mr. Pratt: I don't want you to withdraw your suggestion.

Mr. Faulkner: I offered the stipulation.

Mr. Pratt: I am very glad to accede to counsel's suggestion that we can shorten this matter of his explaining the schedule. I simply want to direct attention to one more feature of these regulations of the Office of Price Administration, and as to that I would like to ask the witness a question.

The Court: Well, let us dispose of this phase of the subject. Is this summary of those regulations that you have all right, Mr. Faulkner?

Mr. Faulkner: Yes, it seems so to me, but I have never seen it. I am willing they go in.

The Court: If there is any question about it let them go in subject to correction.

Mr. Faulkner: Yes.

Mr. Pratt: That is perfectly agreeable.

The Court: That will save some time.

Mr. Faulkner: Yes.

Mr. Pratt: Then will this schedule be marked an exhibit of the Government and received in evidence?

Mr. Faulkner: Then if you want to show it to the jury we can use all three. [2883]

(Testimony of L. H. Kirckheimer.)

(The schedule was marked U. S. Exhibit 173 in evidence.)

The Court: You might outline it so the jury will understand it fully and then it may be passed to them. Did this witness on the stand make up the schedule?

Mr. Pratt: Yes, your Honor.

The Court: Outline it briefly and then pass it to the jury.

Mr. Pratt: I will ask the witness to summarize it.

Q. Mr. Kirchheimer, you are an official of the local OPA office? A. Yes.

Q. What is your official position?

A. My title is Commodity Price Specialist; I am in charge of the Dairy and Produce Division of the Office of Price Administration in the Northern California office.

Q. Referring to this schedule which you have prepared, and which is now marked Exhibit 173 in evidence, will you summarize this for the jury so that they may understand just what the schedule comprises?

A. The Office of Price Administration established regulations which established ceiling prices for eggs which may be charged on a particular day of the year. The eggs in question here were Consumer Grade eggs, and the standards for Consumer Grade eggs are defined by the U. S. Department of Agriculture. If eggs have the interior quality of Grade A, then a price in the schedule can be

(Testimony of L. H. Kirckheimer.)

charged on a particular day. I mean the situation is this: [2884] if they do not meet the requirements —I mean they have to meet the requirements in order to get that price.

The Court: I suggest you may have some data here, what is it?

A. This is data on certain days, for instance——

Q. Well, tell the jury what it is.

A. On October 14th a sale to the U. S. Government——

Mr. Pratt: 1943?

A. 1943, of Large Grade—of Medium Grade A eggs. That means eggs which weigh 40 pounds per case of 30 dozen, and which have the interior quality of Grade A, then the price to the United States Government charged is 55½ cents. If the eggs in question are oil-treated, that means for preservation purposes, that is the price. If they are not oil-treated, then the price should be 1 cent less than the price on the schedule.

Q. That was on October 14th?

A. Correct.

Q. Of 1943. Then you have set forth on the schedule some data as to the date October 18, 1943; is that right?

A. That is correct. October 18, 1943, oil treated —non-certified Large—Medium Grade A were 56½.

Q. During the period between the first of these dates and the second, the price that you have for the first applies, is that right? A. Yes.

Q. Then that price change occurred four days later? A. That's right.

(Testimony of L. H. Kirckheimer.)

Q. That is indicated by one of the amendments to the schedule, [2885] is that right?

A. I have to correct that. That is not applicable, I think, between these two days. There might be a price increase—a result of an advance week—every week the price changes.

Q. For the period that you have, that applies only to that particular date, is that right?

A. That is correct.

Q. Then below that you have the prices for the month of April and May, 1944. Was there any change in the prices during the months of April and May, 1944?

A. No. The prices during that period are the same.

Q. They remained the same? A. Yes.

Q. The next you have——

A. Pardon me. Remained the same in April and May. They are different from the prices previously.

Q. Yes, but they are the prices that are indicated here, and those prices obtained throughout the months of April and May, 1944.

A. That is correct.

Q. You then have the price on December 5, 1944, and below that you have the price of Procurement grade eggs on the 5th day of December, 1944, which was obtained by you by consulting the various modifications or amendments, is that right?

A. That is correct.

Q. The other notations which you have on this

(Testimony of L. H. Kirckheimer.)

schedule resisting to adjustments and other items are as indicated for the various dates on the schedule you have prepared? A. That's right.

Q. As to the classifications on Consumer Grades of eggs, namely, Mediums, Large, Small, and Peewee, are the weights of eggs specified or controlled by specific provisions of the OPA in the regulations that we have under discussion?

A. That is correct. I want to make one *correct*. The expression "Peewee" is a term that is not used in the OPA regulations. That is a terminology which is used in the California Agriculture Code.

Q. Does the California Agriculture Code have anything to do with any of the other items that you have mentioned, either as to the price or weight or size of eggs? A. No.

Q. Then it is controlled entirely by the OPA Schedule? A. Correct.

Q. With the exception as to the use of this term "Peewee"?

A. Yes. That is terminology—I define it on the schedule, "Peewees," I mean small eggs, below, weighing less than 34 pounds per 30 dozen, we call them small eggs, less than 34 pounds. The terminology of the Department of Agriculture of California would be "Peewees."

Q. Do the OPA ceiling prices relate to Peewee eggs as you call it?

A. The terminology "Peewee" is not used in the OPA.

Q. I understand that, but you have under the

(Testimony of L. H. Kirckheimer.)

April and May dates in 1944, you have the word "Peewee." A. Yes.

Q. Then you have the prices, AA 29 cents, A 29 cents, B 27 cents, and C 24 cents. How did you arrive at those amounts [2887] in reference to the terminology of Peewee?

A. These are eggs which would weigh less than 34 pounds per 30 dozen.

Q. So you have put in this category of Peewee any eggs that weigh less than 34 pounds for 30 dozen? A. That is correct.

Mr. Pratt: That is all.

Mr. Faulkner: Is that all?

Mr. Pratt: That is all. I will pass these to the jury.

The Court: Pass the two duplicate sheets, one on each side.

Mr. Faulkner: I better not hand that to the jury; that is not the one in evidence. May I look at your original while the jury is viewing the exhibit? It will save some time. [2888]

The Court: While you are resting, Mr. Faulkner, you might take those up.

Mr. Faulkner: My resting moments are few and far between, your Honor. I think it will be a little easier if I let the witness use the one marked rather than the one that he had in his own handwriting, and I will use the counterpart. Do you want to put that on your lap? I think the typing will be easier for you.

Q. Now, you have prepared here certain data

(Testimony of L. H. Kirckheimer.)

relative to the price of eggs during certain periods, and the data that you have prepared and the periods that you have referred to were indicated to you by Counsel for the Government, am I correct in that?

A. That is right.

The Court: Speak up so the jurors will hear you.

The Witness: A. That is right.

Mr. Faulkner: May I get the witness' name?

The Witness: Kirckheimer, K-i-r-c-k.

Mr. Faulkner: Q. Mr. Kirckheimer, it is a fact, is it, not, that, for instance, to get certain of these figures, there is a four-cent differential between a Large egg and a Medium egg, whether it is processed or unprocessed?

A. That is correct.

Q. And there is a four-cent differential per dozen between a Small egg and a Medium egg, that is correct, is it not?

A. That is right. There is a four-cent differential—Medium [2889] is four cents less than Large, and the Small four cents less than Medium.

Q. In other words, you go from forty-three down to thirty-nine between a Large and a Medium, and you go from thirty-nine to thirty-five from Medium to Small, in those figures you have given with respect to April and May. Now, in the month of October the price of eggs change, do they not?

A. That is correct.

Q. And they consistently change in October, do they not?

(Testimony of L. H. Kirkheimer.)

A. Probably. There might be two weeks the same.

Q. To illustrate, a Medium egg in October 1943 was priced at 56½ cents?

A. Medium Grade A.

Q. A Medium Grade A, and a Medium Grade AA, that is correct, is it not?

A. That is correct.

Q. In other words, the prices of a Medium Egg, AA, or A, is 56½ cents?

A. I wish to add the terminology AA is usually only used if the eggs are certified by the United States Department of Agriculture.

Q. That is so——

A. If they are not certified, their price for AA and A is the same.

Q. In October—you haven't got it there—but the price on the 18th of October for a Small egg would be four cents under the Medium A, would it not, even though you haven't got it on that sheet?

A. That is correct.

Q. What?

A. That is correct, yes sir. [2890]

Q. Those prices relate to eggs whether they have been in cold storage or not, do they not?

A. If they come out of cold storage and they are candled and meet the requirements of the United States Department of Agriculture, then the sale is made and the buyer receives the eggs, Department of Agriculture, they are Grade A eggs.

Q. As long as the egg meets the requirement of

(Testimony of L. H. Kirckheimer.)

the Department of Agriculture as to grade, these prices obtain?

A. Yes, when the buyer receives the eggs.

Q. Now we are going into a different field, Mr. Kirckheimer. In other words, these prices are based upon grades of eggs as defined by the Department of Agriculture?

A. That is correct.

Q. And it does not make any difference whether the eggs are out of a cold storage plant or are fresh from the chicken ranch, does it, providing they meet the grade?

A. Providing that when the buyer receives the eggs they meet these requirements.

Q. It depends on the contract, doesn't it?

A. Our regulations read that they have to meet the requirements on the date of delivery. On the invoice that date of delivery is stated, and then on that date he sends Grade A eggs and they have to be Grade A eggs.

Q. Is there any question, Mr. Kirckheimer, from your knowledge of the egg regulations of the OPA, that Small eggs which would sell in the months of April and May for 35 cents a dozen could be held in cold storage and sold in October for 52½ cents a dozen if they met the grade?

A. That is correct. [2891]

Q. In other words, in the months of April and May there is no question, is there, Mr. Kirckheimer, that it is to the advantage of the dealers in eggs to take Small eggs and put them in cold storage,

(Testimony of L. H. Kirckheimer.)

and sell them for about 17 to 18 cents higher in the fall?

A. That is correct, for in the fall they are again —if they are candled again, and they have the same interior quality.

Q. In other words, the spread in the price of the eggs between April and May as distinguished from the month of October, is roughly 17½ cents a dozen, isn't it, as to each particular grade?

A. That is right.

Mr. Faulkner: I think that is all, Mr. Kirckheimer.

The Court: Step down. Call your next witness.

C. E. NORQUIST,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. C. E. Norquist.

Direct Examination

Mr. Houck: Q. Mr. Norquist, by whom are you employed?

A. By the United States Weather Bureau.

Q. What department is that in?

A. The Department of Commerce of the United States.

Q. For how long have you been so employed?

A. Forty-two years, I believe, sir. [2892]

Q. All here in San Francisco?

(Testimony of C. E. Norquist.)

A. Oh, no. In the United States.

Q. How long have you been in San Francisco?

A. Since December 15, 1943.

Q. And what is your present title here in San Francisco?

A. Official in Charge, United States Weather Bureau.

Q. How many persons do you have working in that office?

A. Well, the number varies from week to week. At the present time I think there are about fifty on the payroll.

Q. Are they under your supervision?

A. Yes sir.

Q. How long have you been in that position since you were here in San Francisco?

A. Yes, that is what I came here for.

Q. Since 1943, is that right?

A. That is right.

Q. As the supervisor of this office do you keep a record of the temperature here in San Francisco?

A. Yes sir.

Mr. Faulkner: Your Honor, we object to this on the ground that the records of the Weather Bureau are incompetent, irrelevant and immaterial, and not within the issues of this case.

Mr. Pratt: The purpose of this testimony, if the Court please, is this: a suggestion was made in connection with the cross-examination of some Government witnesses that eggs may have deteriorated because of extreme heat on the waterfront in San

(Testimony of C. E. Norquist.)

Francisco. We expect to show by this witness what the maximum and minimum temperature was on the days that are involved in this case, and that is all. [2893]

Mr. Faulkner: I would certainly object to the temperature obtained in this city and county——

The Court: It may and may become material. I will limit it to that outline which he has just suggested.

Mr. Faulkner: Exception, your Honor.

The Court: Proceed.

Mr. Houck: Q. Do you keep a record of the temperature in this city? A. Yes.

Q. And is that a daily record?

A. Daily record, hourly record.

Q. Have you produced it here in court?

A. I have.

Q. Who is it who actually notes the temperature? A. One of the observers.

Q. Under your supervision? A. Yes sir.

Q. And how does he note it?

A. If I get your question right——

The Court: Q. How does that notation get in this book, that record that you have there?

The Witness: A. It is made by the person who takes the observation.

Q. He actually makes he entry in that book?

A. That is right.

Mr. Houck: Q. Will you turn to the date April 15, 1944?

(Testimony of C. E. Norquist.)

Mr. Faulkner: I should like to ask the witness a question on that subject.

The Court: You may. [2894]

Mr. Faulkner: Q. Mr. Norquist, at what point in the City of San Francisco is the observation made as to the tempertaure?

The Witness: A. On the roof of the Federal Office Building in the Civic Center.

Mr. Faulkner: I respectfully submit, your Honor, that there is no foundation to show that the temperature on the roof of that building has anything to do with the temperature in the Outer Harbor in Oakland or on the piers.

The Court: That will go to the weight of the testimony. Let the Jury determine that.

Mr. Faulkner: Your Honor, it would not be a matter of weight. It is a different place.

The Court: The Jury knows that. Let them weigh the testimony. Proceed.

Mr. Faulkner: Exception.

Mr. Houck: Q. What is that document I have just handed you, Mr. Norquist?

A. This is a certified copy of the record that I hold in my hand or on my knee, prepared in my office by competent employees and has been checked and rechecked and the certification signed by myself personally.

Mr. Faulkner: May I ask the witness on question?

Q. Is the department you work under the one that Major Bowie was head of many years?

(Testimony of C. E. Norquist.)

A. I beg your pardon. I didn't get you. [2895]

Q. Is the department that you work in the one that Major Bowie was head of for many years?

A. That is right. I hold the position Major Bowie had.

Q. These are records of his department?

A. That is right.

Mr. Faulkner: I have no objection. I object to the substance, your Honor, but not the form.

Mr. Houck: I understand you have no objection to this record going in evidence?

Mr. Faulkner: Yes, on any basis of authenticity.

Mr. Houck: You have no objection on the ground it would be a correct copy——.

Mr. Faulkner: Mr. Norquist says it is.

Mr. Houck: Yes.

Mr. Faulkner: And I accept that.

Mr. Houck: Then I ask that this be——

Mr. Faulkner: Now, wait a minute, Mr. Houck.

Mr. Houck: I ask that this be marked in evidence as Government's next in order.

The Court: Let it be admitted and marked.

Mr. Faulkner: May the objection to the testimony go to the exhibit?

The Court: The objection will be overruled. It may be admitted and marked.

Mr. Faulkner: Exception.

(The document was thereupon received in evidence and [2896] marked U. S. Exhibit 174.)

Mr. Houck: Q. I hand you Government's 174 in evidence and I will ask you to read from that

(Testimony of C. E. Norquist.)

document the maximum and the minimum temperatures for the period between April 15 and May 15, 1944, and will you precede each set of temperatures with the date that you are reading about?

A. Beginning with April 15, 1944, High 56, Low 49. These dates are all for April in the year 1944, so I will simply read the date, is that agreeable?

Q. Yes.

A. The 16th, 56-46; 17th, 57-47; 18th, 56-49; 19th, 54-48; 20th, 54-47; 21st; 60-46; 22nd, 59-48; 23rd 58-49; 24th, 54-48; 25th, 58-47; 26th, 59-49; 27th, 60——

Mr. Faulkner: May I have that last one?

The Court: What is the last one?

The Witness: On the 26th?

Mr. Faulkner: Yes.

The Witness: 59-49; 27th, 60-49; 28th, 58-51; 29th, 60-51; 30th, 62-50.

Now we will be reading for the month of May, beginning with the first: 75-50; 2nd, 75-51; 3rd, 62-50; 4th, 76-53; 5th 67-50; 6th, 56-50; 7th, 59-51; 8th, 58-51; 9th, 61-50; 10th, 57-49; 11th, 61-51; 12th, 62-52; 13th, 66-50; 14th, 63-51; 15th, 59-50.

Mr. Houck: Q. Does your record show the high and low for the 23rd of May, 1944, Mr. Norquist? [2897]

A. The 23rd of May?

Q. Yes.

A. This record does not, but the original record does.

Mr. Houck: Mr. Faulkner, have you any objec-

tion to Mr. Norquist reading from the original record without introducing it in evidence?

Mr. Faulkner: Any record he reads from is satisfactory to me, except that I make the objection that the temperature on top of the building hasn't anything to do with the temperature over in the wharf in the Outer Harbor.

Mr. Houck: Mr. Norquist has told me that he wants the record back and I do not want to mark it. The 23rd of May.

The Witness: May 23, 1944?

Mr. Houck: Q. Yes sir.

A. High, 62, Low 49.

Q. Will you go back to Government's 174, and I direct your attention to the date, May 1, 1944. This is back to the other document.

A. May 1?

Q. Yes. There I understand the maximum temperature got over 70 for a certain part of the day.

Mr. Faulkner: 75.

The Witness: A. The high was 75.

Mr. Houck: Q. Will you read the hours or the period of the day in which the temperature was over 70?

A. Beginnig at 11 o'clock in the morning, 73; at noon, 74; [2898] one p.m., 70; 2 p.m., 70; 3 p.m., 73; and 4 p.m., 70.

Q. Will you do the same for the second day of May?

A. Beginning at 9 o'clock in the morning, 73;

(Testimony of C. E. Norquist.)

10 o'clock, 75; 11 o'clock, 67—that is all we have above 70 for the day, two hours—9 a.m., 73; 10 a.m., 75.

Q. How about the third day of May? Was that high over 70?

A. No, the high was 62 on the third.

Q. The fourth of May, I think it was?

A. On the fourth of May the high was 76.

Q. Will you read the hours that the temperature was over 70?

A. The temperature was 70 at 11 a.m. and 75 at noon; 76 occurred between 11 o'clock and noon, probably about 11:45.

Q. How long in the afternoon was it 70 or over?

A. Not any time.

A. Not at all. Now, will you turn to December 4, 1943, and read the next 14 days.

Mr. Faulkner: December 4, 1943?

Mr. Houck: December 4, 1944. I beg your pardon.

The Witness: December 4, 1944. The temperatures following are all for December, 1944: December 4th, 59-48; 5th, 60-49; 6th, 64-49; 7th, 63-50; 8th, 65-49; 9th, 64-49; 10th, 55-49; 11th, 65-50; 12th, 68-50; 13th, 62-50; 14th, 59-50; 15th, 65-52; 16th, 62-50; 17th, 59-50; 18th, 57-52.

Mr. Houck: That is all of this witness.

Mr. Faulkner: That is all. [2899]

Mr. Pratt: That is all.

TRINI ROBLES,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. Trini Robles.

Direct Examination

Mr. Pratt: Q. Miss Robles, your home is in San Francisco, is it not? A. In Oakland.

Q. In Oakland? A. Yes sir.

Q. I believe you are employed by Nye & Nissen, Inc., are you not? A. That is right.

Q. How long have you been employed by that company?

A. Since January 1943.

Mr. Pratt: You will have to speak up.

The Court: All the jurors must hear your answers and the reporter must take it down. It will help him if you raise your voice.

The Witness: Yes sir.

Mr. Pratt: Q. You say you went to work there in January 1943? A. Approximately.

Q. And have worked there continuously since that time? A. Yes sir.

Q. What is the nature of your duties?

A. General office work, and I also operate the switchboard. [2900]

Q. And operate the switchboard?

Mr. Faulkner: I do not hear Miss Robles.

The Witness: General office work, and I also operate the switchboard.

Mr. Pratt: Q. During this period of time that

(Testimony of Trini Robles.)

you have been employed there have you had anything to do with the invoices that were issued by the company?

A. I typed them up.

Q. You typed them up. Who are there in this office? How many employees are there in that office? A. How many?

Q. Yes. A. Offhand I do not know.

Q. Well, about how many?

A. In that office itself?

Q. Yes.

A. Well, about eight of them—about ten of us, I guess.

Q. About eight or ten?

A. About eight or ten.

Q. And were there about the same number of employees back in 1943 and 1944?

A. I believe there were less in 1943, but I can't remember just how many there were.

Q. And in 1944 were there about the same number? A. Approximately.

Q. Who employed you? Who hired you there?

A. The office manager.

Q. And who is the office manager?

A. Mr. J. L. Eichler.

Q. Who? A. Mr. J. L. Eichler.

Q. Mr. Eichler? A. Yes sir.

Q Is the office manager. And who else is there in the office? [2901] What men are in the office?

A. Our office manager, traffic manager.

Q. The what?

(Testimony of Trini Robles.)

A. The office manager, traffic manager.

The Court: Give the Jury their names, so they will know who they are.

The Witness: The traffic manager, Mr. C. H. Somer, and at the present time our auditor, Mr. William Bailey, and our vice-president, Mr. Jack Smith.

Mr. Pratt: Q. How about Mr. Moncharsh?

A. Mr. Moncharsh, our president.

Q. He is there, isn't he?

A. That is right.

Q. Is Mr. Moncharsh in charge of the business of the company there in that office?

A. Yes sir.

Q. In connection with the writing up or typing of the invoices that go out to customers, who directed your work in that connection?

A. The shipping clerks of the various departments, city sales and——

Q. And who are the shipping clerks that you speak of?

A. Mr. Ruby Goddard is the shipping clerk of Nye & Nissen, that department, and Mr. Henry Berman was sales manager for city sales.

Mr. Faulkner: May I have that answer read.

(The answer was read by the reporter.)

Mr. Pratt: Q. Now, what is your contact with Mr. Goddard when it comes to writing up these invoices?

A. You mean now? [2902]

Q. Yes, now or then?

(Testimony of Trini Robles.)

A. I bill all Nye & Nissen sales.

Q. What is it?

A. I bill all Nye & Nissen sales.

Q. You bill all of the sales. You said that you got instructions from the shipping clerk.

A. I didn't say I got instructions. Now I bill all Nye & Nissen sales, if that is what you mean.

Q. How about back in 1944?

A. I also billed city sales then.

Q. And you spoke a moment ago of getting some directions from the shipping clerks, from Mr. Goddard and Mr. Berman. How did that occur? What instructions did you get from them?

A. Instructions to bill out whatever invoices were given to me.

Q. And where did you get the description of the merchandise to go into the invoice?

A. From handbills.

Q. What do you mean by handbills?

A. Handbills that are written up as the orders were given.

Q. By whom were those drawn up?

A. By various—either Mr. Berman or Mr. Goddard, whoever handled the orders.

Q. Then that comes to you on a slip of paper that is transcribed or written in a book, is it?

A. It is an order.

Q. An order form? A. Right.

Q. That comes to you and then you make up the invoice, is that right?

A. That is right.

(Testimony of Trini Robles.)

Q. And when is that done with reference to the time the merchandise is delivered, do you know?

A. At various times during the day, whenever the orders come in or had to go out.

Q. What do you do then with the invoices that you prepare? [2903]

A. I gave them back to whoever they belonged to.

Q. That is to the particular shipping clerk, to Mr. Goodard? A. That is right.

Q. Or Mr. Berman, is that right? And did that same custom prevail in April and May of 1944?

A. Yes, I guess it did.

Q. And also in December of 1943?

A. Yes sir.

Q. October of 1943 and December of 1944, did the same practice prevail? A. Yes sir.

Q. I will show you a paper that is Exhibit No. 53. Can you identify that as one of the invoices that you prepared? A. Yes sir.

Q. You can. I notice that there is a rubber stamp at the lower righthand corner of this invoice. Did you place the rubber stamp on?

A. Yes sir.

Q. And did you do that on all invoices that went out for Government purchases of material?

A. That is right.

Q. Did you yourself sign one of these copies?

A. I signed the original.

Q. How many copies of the invoices did you make?

(Testimony of Trini Robles.)

A. Whatever was required. Different companies required different numbers of invoices.

Q. So far as the sales to the Government were concerned, how many copies?

A. There were still various copies.

Q. Quite a number of copies in each instance?

A. From six on, yes. [2904]

Q. From six on up?

A. That is right.

Q. Now, you say you signed the original in each instance? A. Yes sir.

Q. Under the rubber stamp?

A. Yes sir, unless it was required to sign more. At times it was required to sign more.

Q. Sometimes you signed more. And how did you sign those?

A. Trini Robles—Nye & Nissen, Trini Robles, Bookkeeper.

The Court: Is there any hope of getting through with this witness?

Mr. Faukner: Yes.

Mr. Pratt: I have quite a lot of things I want to call to her attention.

Mr. Faukner: I stipulated all these were signed.

Mr. Pratt: I know, but I want to ask her some questions.

The Court: The jurors may be excused. Keep in mind the admonition of the Court and return tomorrow morning at 10:00 o'clock. [2905]

Friday, March 15, 1946, 10:00 o'clock a. m.

The Clerk: United States vs. Nye & Nissen, on trial.

The Court: Do you waive the roll call, stipulating and agreeing all of the jurors are present and seated in the box? Proceed.

TRINI ROBLES

recalled;

Direct Examination (resumed)

Mr. Pratt: Q. Miss Robles, I directed your attention yesterday to Exhibit 53, which was an invoice for the delivery of certain products on the steamship Henry White. You testified, as I understood it, that you got the information for all of these invoices from the man in charge of sales, either Mr. Goddard or Mr. Berman; is that right?

A. I got the information from the handbills that came in to me.

Q. From the handbills, which were written up by these men whom I have mentioned?

A. Yes sir.

Q. Did these handbills include the prices to be placed on the invoices?

A. They included the prices to be extended there.

Q. They included the price of eggs per dozen, for instance? A. That's right.

Q. Then you multiplied them by the number of dozen and you made the extension?

(Testimony of Trini Robles.)

A. Yes. [2906]

Q. You made the computation?

A. That's right.

Q. Was that the case always?

A. Yes, sir, as I remember.

Q. I call your attention to another of these exhibits.

Mr. Faulkner: Which was the first one?

Mr. Pratt: The first one was Exhibit 53, which was delivered on the steamship Henry White.

Q. After you had extended the prices on these invoices were those prices checked by anyone?

A. Yes, they were.

Q. Who checked them?

A. No one in particular, just anyone who was available at the time.

Q. Anyone who was available up in the office?

A. That's right.

The Court: Raise your voice so the jurors can all hear you.

The Witness: A. Yes sir.

Mr. Pratt: Q. How many persons were there who did that checking?

A. Sometimes there were one or two and other times during the day they all were there.

Q. I don't hear you?

A. Sometimes there were just one or two and other times the whole office was there. Ususally one of the girls checked them for me and at times in the morning I was alone.

(Testimony of Trini Robles.)

Q. That was just in order to be sure that the multiplication was correct? A. That's right.

Q. I show you another of these invoices, which is Exhibit 57. That relates to the delivery of eggs and cheese on the steamship [2907] Cape Pillar. Do you identify that as your work?

A. Yes.

Q. You do.

The Court: Now, pardon me. It will be necessary for the jurors to hear every word that you say. Raise your voice so all can hear.

Mr. Pratt: Q. What you have said about this other invoice applies as well to Exhibit 57, does it not?

A. As far as extensions.

Mr. Faulkner: May I inquire, in other words, is there some claim that these multiplications were wrong?

Mr. Pratt: Not in the least.

Mr. Faulkner: Yesterday, Mr. Pratt, I meant to inquire, without any objection on my part, certain prices of the Office of Price Administration were introduced. Is there any claim of any kind that the Office of Price Administration ceilings were exceeded? I don't mean in respect to any claim you may have as to the quality of merchandise, but I mean is there any claim——

Mr. Pratt: As far as I know at the present time there is none, no difference between the OPA price and the price which is charged on these several invoices.

(Testimony of Trini Robles.)

Mr. Faulkner: Yes; I was sure of that.

Mr. Pratt: This suggestion is made by Mr. Hippeli that perhaps a charge might be made to this effect, that under the OPA regulations unless AA eggs are certified by a method which [2908] is prescribed and which was not followed, then there would be no authority to charge the ceiling price for AA eggs.

Mr. Faulkner: Well, in this case——

Mr. Pratt: I am not expecting to press that question at all.

Mr. Faulkner: Then we won't have to make any investigation of all of those.

Mr. Pratt: Q. I now direct your attention to Exhibit 60, this yellow paper which is marked Exhibit 60, which is labelled, "Customer's Invoice, Nye & Nissen city sales," and dated April 25, 1944, directed to U. S. A., War Shipping Administration, abbreviated, Isbrandtsen Steampship Company, General Steamship Company, steamship Josiah Royce, Berth 3, and so forth, Berth 3, Outer Harbor. What is that paper?

A. This is one of the handbills that went down on the order to the boat.

Q. Whom are those prepared by?

A. That was written by Mr. Berman.

Q. That is Mr. Berman's handwriting, is it?

A. Yes.

Mr. Faulkner: Mr. Pratt, I think I can aid you on this, if you let me see it. On all handbills, subject to correction on either side, that say "Nye &

(Testimony of Trini Robles.)

Nissen, City Sales", it can be assumed that they were made by Mr. Berman, and all handbills that are made—where it says "Nye & Nissen, Inc."—I will check that—all the handbills comparable to the one that you hold, for illustration, that is "Nye & Nissen, Inc.", may be [2909] assumed that they were all made by Mr. Goddard.

Mr. Pratt: In his handwriting?

Mr. Faulkner: Yes, that the handwriting is his. There might be some extensions that someone else made, but it can be assumed that Mr. Goddard made all Nye & Nissen, Inc., handbills, and that Mr. Berman made all Nye & Nissen City Sales handbills.

Mr. Pratt: Miss Robles, how are customers' invoices like this utilized? Will you explain it to me. This particular paper is the handwriting, you say, of Mr. Berman? A. Yes sir.

Q. Now, this represent a sale, a delivery of eggs, processed A. 60 cases; also does that relate to something else besides the eggs?

A. Cheese is on here also, and butter.

Q. Cheese and butter? A. Yes.

Q. And this paper apparently is a carbon copy, is it? A. That is an original.

Q. That is the original. How are these made up? A. In two carbons.

Q. With an original and a carbon?

A. Yes.

Q. Do these come down——

(Testimony of Trini Robles.)

Mr. Faulkner: Mr. Pratt, I think I can make a statement that will clear that up on the record.

Mr. Pratt: Very well.

Mr. Faulkner: In connection with the handbills that are made by Nye & Nissen, Inc., they make those in triplicate and one remains in the machine and two go with the delivery and [2910] the recipient signs one and that comes back, that is, on Nye & Nissen, Inc. Now, on Nye & Nissen, City Sales, that is made in duplicate and they go down and one comes back signed.

Mr. Pratt: And one of them is left with the steward of the ship or whoever happens to receive——

Mr. Faulkner: The consignee.

Mr. Pratt: The shipment.

Mr. Faulkner: That's right.

Mr. Pratt: Q. Do you see these delivery slips?

A. Occasionally.

Q. After the delivery man brings the delivery slips back?

A. I used to mail them to the steamship companies then.

Q. They came to you? A. Yes sir.

Q. Then what do you do with it?

A. I mail them with the invoice to the steamship company, the receipt, that is.

Q. You send the receipt to the steamship company?

A. Well, we type up an extra copy, we also send that.

(Testimony of Trini Robles.)

Q. The invoice goes down to the ship when the load is delivered?

A. Yes sir. Then they are brought back because the steward didn't always send it to the company and it was easier for them to come back to the office to be mailed.

Q. There was always one carbon which was left with the steward? A. Yes.

Q. Then the original that was intended for the steamship company would be put in the mail, is that right?

A. From the office. [2911]

Q. From the office. How many copies?

A. They varied. They were not always the same.

Q. I show you Exhibit 65, which is an invoice of Nye & Nissen to the United States, War Shipping Administration, Alaska Packers Association, General Agent. This is to the steamship John Muir, Voyage 3, Berth, Outer Harbor, Oakland, California, and it is for cheese and eggs and butter, in the total amount of $1,292.91. I observe on this one, if you will look at it, Miss Robles, that this copy is a signed copy. Is that your handwriting?

A. Yes, sir.

Q. And the handwriting you put on there—then there is this stamp, "I certify that the above bill is correct and just and payment therefor has not been received and all statutory requirements as to American products and labor standards and all conditions of purchase applicable to transac-

(Testimony of Trini Robles.)

tions have been complied with and that state or local sales taxes are not included in the amount billed". That you signed in your handwriting, "Nye & Nissen, Inc., Trini Robles, Bookkeeper"?

A. Yes.

Q. And in addition to that stamp is a stamp on the left. Did you affix that stamp on this invoice? I am not referring to the signature, but simply to the rubber stamp? A. No, sir.

Q. You did not. In regard to your signature, did you examine any of these products before you signed this certificate? A. No, sir. [2942]

Q. Did anybody that you know of—as far as you know, was the shipment examined there in the plant; do you know anything about that?

A. I have no knowledge of that.

Q. You have no knowledge of it. You signed all of these invoices, you have seen them signed below the rubber stamp; that was simply as a matter of routine in all of them, is that right?

A. Yes, sir.

Q. That applies to just the invoices that went to the Government? A. Yes, sir.

Q. Just the Government invoices. Who gave you your instructions in connection with signing these invoices?

A. It was office routine, whoever was there.

Q. Office routine? A. Yes, sir.

Q. Who told you that was the office routine?

A. It came with my duties that our office manager told me.

(Testimony of Trini Robles.)

Q. And the office manager was Mr. Eichler?

A. Yes, sir.

Q. I now show you Exhibit No. 76, this is one of the papers that Mr. Faulkner was just talking about, is it? A. Yes, sir.

Q. What do you call that paper?

A. It is an invoice.

Q. That is an invoice. Did you get your information in typing the invoice to be sent to the company, the shipping company, did you get it from this paper? A. Yes.

Q. This is in the handwriting then, of Mr. Goddard, is it? A Yes.

Q. The prices are not extended, simply the price per dozen of [2913] eggs or per pounds for cheese and the date; that is right?

A. Yes, sir.

Q. In this instance you made the invoice which I will show you, if you will look at Exhibit 80 for Identification, and also Exhibit 81, those two papers, the first of those has your signature on it, has it not? A. Yes, sir.

Q. And the other one is a carbon copy of the same paper; that is right, is it not?

A. Yes, sir.

Q. What you have said about the other invoice applies as well to that?

A. You mean—yes, I get the information from the——

Q. The information came from this particular

(Testimony of Trini Robles.)

paper, Exhibit 76, and the extensions were made by you and checked by someone? A. Yes, sir.

Q. That is a delivery to the Cape Breton and the invoice is dated May 10, 1944. Will you look at Exhibit 77, that is another invoice, customer's invoice, which came to you at the time of shipping, or of typing the invoice? A. Yes.

Q. For this boat, the Matson Navigation Company, the steamship Philipa; that is also in Mr. Goddard's handwriting? A. Yes, sir.

Q. And from that you made up this invoice, did you not? A. Yes, sir.

Q. Which are Exhibits 83 and 84. I notice that on this there is another rubber stamp which says "No commission has been paid or is to be paid and the bill rendered does not include any [2914] item for commission". You put that on, did you not?

A. Yes, sir.

Q. You put that on almost all of these——

A. Of the War Shipping invoices.

Q. Of the War Shipping invoices. You put it on all of them, did you? A. Yes, sir.

Q. That was the instruction of the office manager of Nye & Nissen, Inc.? A. Yes, sir.

Q. Here is Exhibit 78, which called for a delivery of products to the steamship Hawaiian Shipper at Pier 32, dated September 15, 1944. You recognize that? A. Yes, sir.

Q. Mr. Goddard's handwriting?

A. Yes, sir.

Q. Also another one, the next exhibit is Exhibit

(Testimony of Trini Robles.)

No. 79; that is also a delivery to the Hawaiian Shipper of products on December 5, 1944. Is that right? A. Yes, sir.

Q. Then these two invoices, 86 and 87, one is a duplicate of the other, I think, is it not? One is a carbon copy of the other? A. Yes, sir.

Q. 400 cases of eggs, Large, Processed, Procurement No. 1, to the Hawaiian Shipper?

A. Yes, sir.

Q. On December 5.

Mr. Faulkner: What were the two last ones?

Mr. Pratt: 86 and 87.

Mr. Faulkner: Was it 79?

Mr. Hippeli: There were No. 78 and 79 and 86 and 87. [2915]

Mr. Pratt: Q. I direct your attention now to these invoices, 93 and 94, which relate to the shipment of eggs, cheese and butter, to the steamship Cape Charles on invoice dated April 29, Exhibit 93 for Identification; that has your handwriting as the others, is that right? A. Yes, sir.

Q. The next one, 94, is a carbon copy of what I have here? A. Yes, sir.

Q. Exhibit No. 98, that is another invoice for the same ship, is it not? A. Yes, sir.

Mr. Faulkner: We have stipulated to all of this, your Honor.

Mr. Pratt: Dated April 29, 1944, Exhibit 98.

Mr. Faulkner: We stipulated a long time ago that every paper which purports to have this lady's signature on it was signed by her.

(Testimony of Trini Robles.)

Mr. Pratt: Q. Exhibit 104, is that in Mr. Goddard's handwriting?

A. Mr. Berman's handwriting.

Q. That is Mr. Berman's handwriting. The pencil figures that are opposite the items, do you know whose handwriting that is?

A. They belong to me.

Q. That is your handwriting. Those are the extensions you made on this particular delivery—that is a delivery slip? A. That is a handbill.

Q. The handbill for these products which were to be delivered to the steamship Francis W. Parker and dated May 9; that is [2916] right?

A. Yes, sir.

Q. And the invoice then bears out your pencil memorandum, your pencil figures by showing the extension on this particular Exhibit 102; that is right, is it not? A. Yes, sir.

Q. Now, directing your attention to some invoice slips and the charges for products delivered to the steamship Clark, this one, which is Exhibit 111, that was prepared by you and has your handwriting just as the others, has it not? A. Yes, sir.

Q. Then also the next exhibit, No. 112, also of the Clark and for other products, also has your handwriting, has it not? A. Yes, sir.

Q. That is dated October 18. Another one dated November 3, 1943, for 40 cases of Medium AA Processed eggs to the Clark, that also has your signature? A. Yes, sir.

Q. Now, the particular invoice, which is Ex-

(Testimony of Trini Robles.)

hibit 112, and which is dated October 18, 1943, for delivery to the William F. Clark, it is noted that you described the eggs as "45 cases of eggs Medium AA Processed". The information about the character of the eggs came to you from whom?

A. I got the information on the handbill from which I typed this.

Q. That handbill came from either Mr. Goddard or Mr. Berman, isn't that right?

A. Whoever took the order.

Q. And the handbill was this same description, 45 cases of eggs, Medium AA Processed; is that right? A. Yes, sir.

Q. I will now show you Exhibit 130, which is a freight bill of [2917] the California Freight Lines to Nye & Nissen covering—the date is October 14, 1943, for 105 cases of eggs.

Mr. Faulkner: Covering what?

Mr. Pratt: 105 cases of eggs, a freight bill of the California Freight Lines, and I will show you, I will direct your attention to the pencil signature in the middle of this freight bill. Do you know whose handwriting that is?

A. Yes, it is Mr. Goddard's.

Q. 105 cases, is that right? A. Yes, sir.

Q. In pencil? A. Yes, sir.

Q. I now call your attention first to Exhibit 113, that is—what do you call it again?

A. Invoice.

Q. The invoice. You also gave it another name. That comes to you from the shipping clerk?

(Testimony of Trini Robles.)

A. I don't remember.

Q. Well, it is the invoice from which you make your typewritten invoice? A. That's right.

Q. That is Mr. Goddard's handwriting, is it?

A. Yes, sir.

Q. That is for delivery of certain products on the steamship Cape Cumberland, Berth 6, Outer Harbor, Oakland, and with the notation written in Mr. Goddard's handwriting, "Inspected by W.F.A."; is that right? A. Yes, sir.

Q. You wrote that same thing on this invoice which is Exhibit 140, did you not?

A. Yes, sir.

Q. And signed it as indicated?

A. Yes, sir.

Q. I will call your attention rapidly to these, 144, shipment [2918] to the Gilbert Hitchcock of a lot of eggs, butter and cheese; that was typed by you and handled in the same way as the others?

A. Yes, sir.

Q. The same is true, is it not, of Exhibit 147, that covers a shipment to the steamship James Oliver at Moore Drydock No. 4? A. Yes.

Q. Also labelled, "Inspected by W.F.A.", and this Exhibit 151, in regard to a shipment to the James Oliver, the same is true of that, your signature is on there, is it not? A. Yes, sir.

Q. I will ask you the same about Exhibit 153 to the Mission San Diego, that is just the same, is it not? A. Yes, sir.

(Testimony of Trini Robles.)

Q. The same is true on Exhibit 161, covering a shipment to the steamship Edmund Ross?

A. Yes, sir.

Q. The same is true of Exhibit 164, shipment to the Heber M. Creel? A. Yes, sir.

Q. The same is true as to Exhibit 169, a shipment of products, cheese and eggs, to the steamship William Coulter, dated May 8, 1944?

A. Yes, sir.

Mr. Pratt: That is all.

Cross Examination

Mr. Faulkner: Q. Miss Robles, as I understand, when you went into the employ of the firm of Nye & Nissen, part of your duties were explained to you by someone there and it included the preparation of typewritten invoices? A. Yes, sir.

Q. The method included the preparation of what we have called [2919] a delivery tag or a handbill of some kind being made out supplied by Mr. Berman or Mr. Goddard? A. Yes.

Q. That was copied on a typewritten form similar to those we have—— A. Yes, sir.

Q. An invoice? A. That's right.

Q. Then you did some stamping with a rubber stamp? A. Yes, sir.

Q. Then you would sign it? A. Yes, sir.

Q. Who would bring those invoices to you?

A. Various people. One of the drivers, or sometimes I went after them myself and other times Mr. Berman or Mr. Goddard would bring them up.

(Testimony of Trini Robles.)

Q. When you were all finished who would take them back down——

A. Sometimes I would bring them down myself, sometimes one of the truck drivers would come after them; most of the times I went down myself.

Q. Sometimes Mr. Goddard or Mr. Berman would come for them also?

A. Infrequently, but sometimes.

Q. The usual method was the driver would go and get it or you would go down and deliver it?

A. Yes, sir.

Q. Who would you give them to?

A. Either Mr. Berman or Mr. Goddard.

Mr. Faulkner: I think that is all.

The Court: You may step down. [2920]

MRS. JOSEPHINE I. BRIANT

called on behalf of the Government; sworn.

The Clerk: Will you state your name?

A. Josephine I. Briant.

Direct Examination

Mr. Houck: Q. Your name is Josephine Briant?

A. Yes.

Q. Mrs. Briant, have you been employed by Nye & Nissen? A. I have.

Q. For what period of time was that?

A. From July of 1942—no, 1930 to March, 1942.

(Testimony of Mrs. Josephine I. Briant:)

Q. During that period of time where did you work for that company?

A. I worked in Petaluma and here in San Francisco.

The Court: Would you be good enough to speak up so all the jurors will be able to hear you.

Mr. Houck: Q. Where did you start working in 1930? A. In Petaluma.

Q. When did you come to San Francisco?

A. In the fall of 1940.

Q. The fall of 1940? A. Yes.

Q. Did you work at the Townsend Street plant here? A. Yes, sir.

Q. How long did you work there?

A. About three months.

Q. Then where did you go?

A. Back to Petaluma.

Q. You stayed there the rest of the time you were employed by that company?

A. Yes, sir.

Q. What did you do for that company?

A. I was an egg candler.

Q. You candled the eggs?

A. Yes, sir. [2921]

Q. Did you candle any eggs the first day you came down and worked at the San Francisco plant?

A. Yes, sir.

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial. There are no transactions here in 1940 relating to any claim that deliveries were——

(Testimony of Mrs. Josephine I. Briant.)

Mr. Houck: It is preliminary, your Honor.

The Court: Indicate the purpose of the testimony for the purpose of the record.

Mr. Houck: Well, as a preliminary question to inquire from this witness what she knows about a lot of eggs which she candled in November of 1940. It is perfectly pertinent to the conspiracy count which dates back to 1938.

Mr. Faulkner: There are no eggs involved in this indictment in November, 1940.

Mr. Houck: Well, Pineda testified to numerous things in 1940.

Mr. Faulkner: They were never identified.

Mr. Houck: Well, I am about to identify the lot that she inspected. This is just preliminary to those other questions.

The Court: Well, Counsel is entitled to know your offer of proof, the date of your offer of proof. What do you expect to prove by this witness, so the Court may rule on the testimony.

Mr. Houck: I expect to prove by this witness that she candled a lot of eggs and those eggs were given to an Army inspector to inspect and he inspected and candled them; that [2922] pursuant to instructions from certain of the defendants she then and other girls transferred those eggs out of those cases, put in inferior eggs, into cases that were inspected and stamped, and then certain of the defendants——

The Court: Eggs involved in these allegations in the indictment?

(Testimony of Mrs. Josephine I. Briant.)

Mr. Houck: Yes, in the indictment, yes.

The Court: With the understanding it is connected up, I will allow it.

Mr. Faulkner: Your Honor, there is no shipment of those eggs involved here.

The Court: He indicates that he will connect it up and identify it with some type of eggs here.

Mr. Faulkner: But he doesn't say he will prove that is what she will testify to.

Mr. Houck: We are not tying it in with any of the substantive counts which all occurred in 1944. This is back in 1940. This is the same type of testimony that Henry Pineda testified to, that he worked on a certain lot of eggs which an Army inspector came down and proceeded to inspect and subsequent to the inspection certain things happened to those eggs. This is precisely that type of testimony.

Mr. Faulkner: I remember that testimony. He testified certain Army inspectors examined certain eggs and he testified concerning them. I asked him if he ever saw those eggs leave [2923] the plant, and he said he did not. There is no purchase order. There is no order at all, there is no delivery and it is an unconnected transaction. At the time I cross-examined Mr. Pineda I asked him as to each transaction, if he ever saw those eggs delivered to the Army, if they actually went from the plant of Nye & Nissen, and he said no.

(The matter was argued by respective council.)

The Court: The objection will be overruled.

(Testimony of Mrs. Josephine I. Briant.)

Mr. Faulkner: Exception. And, further, your Honor——

The Court: It goes to the first count of the indictment.

Mr. Faulkner: I may further point out it is unconnected with any particular defendant.

Mr. Houck: Well, that has to be developed.

The Court: Proceed.

Mr. Faulkner: Exception.

Mr. Houck: Q. Did you candle eggs on the first day you worked in the San Francisco plant for Nye & Nissen? A. Yes, sir.

Q. When was that, what part of the day was it you candled eggs?

A. I started as soon as I got here from Petaluma, around about 8:15 in the morning.

Q. Who else worked on this lot of eggs?

A. Laura Barone.

Q. Anybody else?

A. I don't remember the lady's last name, but her first name was Bernice.

Q. Do you remember how many cases of eggs were in this lot [2924] you candled?

A. Approximately around 20.

Q. Who instructed you to candle these eggs?

A. Ed Menges.

Q. What quality eggs were you to candle for on this occasion? A. Specials.

Q. U. S. Specials? A. Yes.

Q. Do I understand when you finished you had 20 cases of U. S. Specials? A. Yes.

(Testimony of Mrs. Josephine I. Briant.)

Q. Did you see these twenty cases being inspected by anybody? A. Yes, I did.

Q. By whom?

A. By a lieutenant in the Army.

Q. When was that in relation to the time you candled them?

A. About three o'clock of the same day, I guess.

Q. That lieutenant in the army, did he have anyone with him?

A. He had a driver with him.

Q. The afternoon of the same day, the first day?

The Court: What day?

Mr. Houck: The first day she was employed by Nye & Nissen in San Francisco, which she testified was in September of 1940.

Mr. Faulkner: First part of when?

Mr. Houck: First part of September. Is that correct? A. Yes.

Mr. Faulkner: I thought you just told the court you were tying this in with an incident with Mr. Pineda in November.

Mr. Houck: No. I said this testimony was similar to [2925] that.

Q. The lieutenant candled these eggs?

A. Yes.

Q. In the afternoon? A. Yes.

Q. Where did he candle them?

A. In the candling room.

Q. Who supplied the eggs for him to candle?

A. Jimmie Nix put them there on the bench where he candled them.

(Testimony of Mrs. Josephine I. Briant.)

Q. How many cases did you see this inspector inspect? A. About three or four.

Q. Did he stamp them or did he not—did he or did he not stamp them when he finished?

A. Yes, he stamped them when he finished.

Q. Then what happened? I beg your pardon. What type of stamp did he put on these stamped cases?

A. A Veterinary Corps stamp, "V.C." on it.

Q. An Army stamp? A. Yes.

Q. What is the general outline of that stamp?

A. Well, it is shaped similar to a horseshoe.

Q. And did you see any cases being stamped, aside from these three in the candling room?

A. No.

Q. Then what happened?

A. After the inspector left those cases were shoved back into the candling room.

Q. How many cases were shoved back in there?

A. All the cases that we had candled in the morning.

Q. That would be those 20 cases? A. Yes.

Q. Did they all bear an inspection stamp?

A. Yes, they [2926] did.

Q. Of that same type you described?

A. Yes.

Q. Who, if anyone, gave you girls instructions, gave you instructions concerning these twenty cases of eggs?

A. I believe Ed Menges did that.

(Testimony of Mrs. Josephine I. Briant.)

Mr. Faulkner: Well, I ask what she believes go out.

The Court: It may go out.

Mr. Houck: Q. Do you recall, you say you believe it was Ed Menges. A. Yes.

Q. Do you know for certain?

A. No, I don't. I don't quite remember.

Q. Who else was there working with you? Who was on the outside handing the eggs to you to candle? A. Jimmie Nix put them through.

Q. Was Ed Menges outside? A. Yes.

Q. Was anyone else present outside helping with these eggs?

A No. You mean in the candling room?

Q. From the outside. A. No.

Q. You say you believed it was Ed Menges. You don't know which one of them? A. Yes.

Q. Who gave you these things. Would it be fair to say it was one or the other?

Mr. Faulkner: We object.

The Court: Sustained.

Mr. Houck: Q. Was it one or the other of these two men [2927] who gave you these instructions?

Mr. Faulkner: We object to that.

The Court: If she knows she may answer.

Mr. Faulkner: If the Court please, if the witness testifies yes, Mr. Menges is in court. He is the defendant. Is the evidence admitted against him? Who does it bind? If both men were in

(Testimony of Mrs. Josephine I. Briant.)

court, your Honor, as defendants, I would have no objection, but one man is not here.

Mr. Houck: If it is not Mr. Menges it is Mr. Nix. I will connect Mr. Nix up with the conspiracy and then it is binding on all of the other conspirators.

Mr. Faulkner: But it does not bind that poor fellow sitting over here for nine weeks.

The Court: Read the question.

(Question read by the reporter.)

The Court: I think the question is objectionable. Sustained.

Mr. Houck: Q. If it was not Mr. Menges who would it——

Mr. Faulkner: We will object to that as hypothetical.

Mr. Houck: Did you receive any instructions regarding these eggs from anyone other than Menges or Nix? A. No.

Q. What did you do with these eggs?

A. We took the inspected eggs out of this case and refilled it with other eggs.

Q. Will you tell how you did that? Before that, how many girls participated in this transferring?

A. All the girls [2928] that were there.

Q. How many was that? A. Seven.

Q. Seven girls? A. Yes.

Q. You each got two or three cases?

Mr. Faulkner: Well, just let her answer.

Mr. Houck: Q. Well, how was the work divided?

(Testimony of Mrs. Josephine I. Briant.)

A. I can't say. Some girls work faster than others.

Q. Well, they all had some? A. Yes.

Q. When you did transfer the eggs out of the inspected cases where did you put them?

A. We put them into another case, an empty case.

Q. An empty case?

A. Yes. Then we transferred the other eggs into the case that was stamped.

Q. Where did the other eggs come from?

A. From the outside.

Q. You put them into inspected cases once you had emptied them? A. Yes.

Q. Did you have occasion to candle any of these eggs that you put into the inspected cases?

A. Yes.

Q. About how many did you candle?

A. I wouldn't remember how many, but I candled them, as I went through I candled them.

Q. You didn't candle them all?

A. No; I was not supposed to.

Q. When you candled some of these eggs what was the result of your candling?

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial, not the best evidence. [2929]

The Court: She may state what she did.

Mr. Houck: Q. What did you see when you candled the eggs?

A. Those eggs were of poor quality?

(Testimony of Mrs. Josephine I. Briant.)

Mr. Faulkner: We ask that go out as calling for an opinion of the witness.

Mr. Houck: Q. What grade would you have applied to these eggs that you candled?

A. I would call them Trades.

Q. U. S. Trade eggs, what are they?

A. As far as I am concerned, it is a very inferior egg; it was low in quality.

Q. Is it below the U. S. Special?

A. Oh, yes.

Q. Why did you classify them as Trades?

A. They were, the eggs were shrunk, the air cell, there wasn't any air cell in them.

Q. There wasn't any air cell. How do you mean, the eggs were shrunken? What was shrunken?

A. The whole egg was shrunken, the egg white.

Q. The interior of the egg?

A. The interior of the egg.

Q. By saying there was no air cell, what do you mean?

A. Every egg has a little air space at the top, and candling is determined by the air space, and the yolk and the white.

Q. You say they had no air space?

A. There wasn't any in there, it had dropped down.

Q. You say the contents had dropped from the top of the egg so there was no air space there on top? A. That's right.

Mr. Faulkner: I object to that. That is just